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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/069,090	02/07/2002	John Hawkins	MPL318	9093

7590

02/26/2004

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EXAMINER
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PRYOR, ALTON NATHANIEL

ART UNIT	PAPER NUMBER
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1616

DATE MAILED: 02/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/069,090

Applicant(s)

HAWKINS, JOHN

Examiner

Alton N. Pryor

Art Unit

1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on 25 November 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☐ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) 20 is/are allowed.
- 6) ☐ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) 15-19 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

Applicant's arguments filed 11/25/03 have been fully considered but they are not persuasive. See arguments below.

I. Rejection of claims 1,2,5,8,9,12,14 under 35 USC 102(b) as being anticipated by Glenn will be maintained in light of amendment filed 11/25/03 for reason on record and reason as follows.

Applicant argues that rejection under 35 USC 102(b) is improper. Applicant states that Glenn does not teach every aspect of the claimed invention. Applicant argues that Glenn teaches that sorbitol and other sugars are optional (not required) to achieve the object of the instant invention, namely the lamellar liquid structure (neat phase). Applicant argues that instant invention requires water-soluble carbohydrates (sorbitol and other sugars). Examiner argues that since Glenn discloses sorbitol and other sugars for his invention this makes Glenn a 102(b) reference over the instant invention.

II. Rejection of claims 1-3,7,9,12-14 under 35 USC 102(b) as being anticipated by Vasudevan will be maintained in light of amendment filed 11/25/03 for reason on record and reason as follows.

Applicant argues that all of Vasudevan's systems are spherulitic systems comprised of lamellar droplets of colloidal-sized droplets of G-phase material dispersed in aqueous phase. Applicant argues that this is what happens when insufficient structurant is present (instant specification page 9 lines 8-11). Applicant argues that at a level of 9.3% by weight in Example 13 of Vasudevan, the sorbitol as used therein is not

present in sufficient quantity to act as a structurant. Applicant argues that the use of a carbohydrate itself as a structurant is not taught in Vasudevan. Applicant argues that instant claim 1 requires that the carbohydrate is present in the capacity of a structurant. Examiner argues that Applicant does not exclude the droplets taught by Vasudevan since Applicant does not recite an amount of carbohydrate that would exclude Vasudevan's invention. In addition, Examiner would like to point out while Vasudevan's Example 13 uses 9.3% carbohydrate, Vasudevan teaches the use of up to 25% sorbitol (carbohydrate). This amount (25%) of sorbitol is clearly enough to cause sorbitol (carbohydrate) to exist as a structurant. See instant specification page 9 last paragraph.

Applicant argues that prior to instant invention, it has never been known that any non-electrolyte could induce structure of any kind. Applicant argues that instant claims reflect Applicant's desire to claim instant invention as aqueous compositions which employ water-soluble carbohydrates as structurants, which is not disclosed in the prior art. Examiner argues that Vasudevan discloses aqueous compositions. See page 3 lines 5-51 of Vasudevan's specification. Also, Examiner argues that Applicant claims do not exclude the presence of electrolytes. For these reasons, the Vasudevan reference reads on the instant invention as a 102(b) reference.

III. Rejection of Claims 4,6,10,11 under 35 USC 103(a) as being obvious over Vasudevan will be maintained for reason on record and reason as follows. Applicant argues that it would have not been obvious to optimize the lamellar spacing or the water content. Examiner disagrees with Applicant. Examiner argues that in any invention optimization is essential to obtain the maximum benefit. In fact in any invention where

all of the limitations are taught by the prior art except for the optimal amounts, Applicant is required to show the significance of the amounts being claimed. In the absence of such a showing, the invention is declared obvious.

Applicant argues that what is missing from Vasudevan is a teaching, suggestion, or motivation that a water-soluble carbohydrate is useful as a structurant in a structured liquid surfactant system, which is what Applicant claims. See arguments above for maintaining Vasudevan's 102(b) rejection.

IV. Objection to claims 15-19 and the allowability of claim 20 are maintained for reasons on record.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

***Telephonic Inquiry***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alton N. Pryor whose telephone number is 571-272-0621. The examiner can normally be reached on 8:00 a.m. - 4:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page can be reached on 571-272-0602. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
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